

Jackson v Easy Delivery Rentals LLC
2026 NY Slip Op 30329(U)
January 22, 2026
Supreme Court, Kings County
Docket Number: Index No. 534912/2023
Judge: Wavny Toussaint
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At an IAS Term, Part 70 of the Supreme Court of the State of New York, held in and for the County of Kings, at the Courthouse, at 360 Adams Street, Brooklyn, New York, on the 22nd day of January, 2026.

P R E S E N T:
HON. WAVNY TOUSSAINT,
Justice.

TYRELL JACKSON,

Plaintiff,

-against-

EASY DELIVERY RENTALS LLC,
NORRIS LAROCQUE. BRITO LIMO
CORP. and WILSON BRITO,

Defendants.

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**DECISION AND
ORDER**

The following papers numbered 1 to read herein
Notice of Motion/Order to Show Cause/
and Affidavits (Affirmations) Annexed
Cross Motion and Affidavits (Affirmation) Annexed
Answers/Opposing Affidavits (Affirmations)
Reply Affidavits (Affirmations)
Affidavit (Affirmation)
Other Papers

NYSCEF Doc. Nos.

51-59

81-89

92

Upon the foregoing papers, defendants Brito Limo Corp. and Wilson Brito (defendants) move (Seq. 03) for an order pursuant to CPLR § 3212, granting summary judgment dismissing the complaint, claiming plaintiff fails to meet the “serious injury” threshold of Insurance Law § 5101 [a], as defined in Insurance Law § 5102 [d]. Plaintiff opposes the motion.

Background

In this action, plaintiff asserts that on October 22, 2022, he sustained personal injuries while a passenger in the vehicle operated by defendant Wilson Britto, and owned by defendant Brito Limo Corp., when it came into contact with the vehicle operated by defendant Norris Larocque and owned by defendant Easy Delivery Rentals, LLC, at or near the intersection of Pitkin Avenue and Crystal Street in Brooklyn, New York. Plaintiff commenced the action by Summons and Complaint filed on November 29, 2023. Issue was joined with service of an answer as to defendants Wilson Britto and Brito Limo Corp. on April 15, 2024 and defendants Norris Larocque and Easy Delivery Rentals, LLC on April 24, 2024.

The Parties' Contentions

Defendants argue that plaintiff's injuries are all non-serious, soft tissue, pre-existing and degenerative in nature, and do not constitute "serious injury" as defined under the Insurance Law. Defendants point to the Independent Medical Examination (IME) report of orthopedist Dr. J. Serge Parisian (Dr. Parisien) who opines that all of plaintiff's alleged injuries were resolved, with no evidence of permanency or disability (NYSCEF Doc. No. 57, p. 3). Defendants also rely on the report of radiologist Dr. Michael Setton (Dr. Setton), who reviewed the cervical spine and lumbar spine and left shoulder MRI imaging of plaintiff, taken on November 8,

2022. Dr. Setton also concluded plaintiff's injuries were all resolved with no evidence of permanency.

In opposition, plaintiff contends he sustained serious injuries as a result of the accident, including a left rotator cuff tear and various cervical and lumbosacral disc herniations and bulges, which remain unresolved. Plaintiff points to the report of his treating physician, chiropractor Dr. Dominic Rubino (Dr. Rubino) who, in preparation of the report, reviewed the orthopedic reports of Dr. Anjani Sinha and Dr. Richard Seldes; the cervical and lumbar spine MRI reports of radiologist Dr. Thomas Kolb; the IME report of Dr. Parisien; the MRI report of Dr. Setton; and his own related medical reports (NYSCEF Doc. No. 87). Dr. Rubino examined plaintiff on multiple occasions, beginning with the initial October 24, 2022 examination, performed two days after the subject accident, with the most recent examination conducted on July 29, 2025. Plaintiff argues Dr. Rubino's report confirmed he sustained serious injuries caused by the accident, including to the cervical and lumbar regions of his spine, resulting in flexion, extension, right/lateral flexion, and right/left rotation ranges reduced by as much as 30% from normal in some instances, which "represent a permanent partial disability of the cervical and lumbar spine" (*Id.*, at pars. 32, 38). The left rotator cuff tear was also confirmed (*Id.*, at par. 19). Based on the foregoing, plaintiff contends his injuries meet the "serious injury" threshold, as set forth under the Insurance Law.

In reply, defendants argue that even on the proof submitted, plaintiff does not meet the 90/180-day limitation period, citing to plaintiff's deposition testimony wherein plaintiff testified to missing only "certain days" from work (*see* NYSCEF Doc. No. 59, p. 44, lns. 2-9). Defendants also argue that as plaintiff is not a medical professional, his affirmation cannot be used to substantiate his injuries. Defendants further argue the reports of plaintiff's doctors were improperly affirmed, and that the MRI's do not discuss causation and degeneration. For these reasons, defendants argue plaintiff's expert reports should be disregarded. Though their attorney's affirmation, defendants also point to plaintiff's gap in treatment for the period October 5, 2023 through July/September of 2025, among other things, as a basis to grant the motion.

Discussion

Standard of Review

Summary judgment is a drastic remedy that should be granted only if no triable issues of fact exist and the movant is entitled to judgment as a matter of law (*Alvarez v Prospect Hosp.*, 68 NY2d 320, 324 [1986]; *Winegrad v New York Univ. Med. Ctr.*, 64 NY2d 851, 853 [1985]).

The issue of whether a claimed injury falls within the statutory definition of "serious injury" is a question of law for the Court, which may be decided on a motion for summary judgment (*see Licari v. Elliott*, 57 NY2d 230, 237 [1982]). A moving

defendant bears the initial burden of establishing, by the submission of evidentiary proof in admissible form, a *prima facie* case that plaintiff has not sustained a serious injury from the subject motor vehicle accident, as a matter of law (*Toure v. Avis Rent A Car Sys., Inc.*, 98 NY2d 345, 352 [2002]; *Gaddy v. Eyler*, 79 NY2d 955, 956-957 [1992]). A failure to make such a showing requires denial of the motion, regardless of the sufficiency of the opposing papers (*Winegrad*, 64 NY2d at 853).

Motion Seq. 03

Relevant here, as to the serious injury categories claimed by plaintiff, the Bill of Particulars states:

The Plaintiff TYRELL JACKSON sustained a serious injury as defined in Section 5102(d) of the Insurance Law of the State of New York in that he sustained an injury which has resulted in a permanent loss of use of a body organ, member, function or system; a permanent consequential limitation of use of a body organ or member; a significant limitation of use of a body function or system; and a medically determined injury of impairment of a non-permanent nature which prevented him from performing substantially all of the material acts which constituted his usual and customary daily activities for not less than 90 days during the 180 days immediately following the occurrence complained of (NYSCEF Doc. No. 56, at par. 27).

On the motion, defendants argue plaintiff cannot satisfy any of the above noted categories asserted by plaintiff. Defendants rely on the IME report of Dr. Parisien, who examined plaintiff at his Brooklyn, New York office on May 22, 2025 (NYSCEF Doc. No. 57). Dr. Parisien also reviewed the Verified Bill of Particulars. Defendants also rely on the report of radiologist Dr. Michael Setton, who reviewed

plaintiff's cervical and lumbar spine and left shoulder MRI imaging, taken on November 8, 2022 (NYSCEF Doc. No. 58). Defendants submit plaintiff's deposition transcript and cites to same to support several propositions that plaintiff, by his own testimony, did not suffer a serious injury (*See* NYSCEF Doc. No. 52, at par. 15).

Notably, Dr. Parisien did not review plaintiff's medical records, stating: "No legally authenticated medical records were available for review" (NYSCEF Doc. No.57, p, 2). At the same time, Dr. Parisien also stated the records would be relevant to his assessment of plaintiff's condition and conceded: "I will be pleased to review [the medical records] and advise whether they have any effect on my opinion, which is based solely on today's examination" (*Id.*).

As set forth in the Bill of Particulars, plaintiff cites the following injuries: disc herniation at C3-C4 impinging upon the thecal sac narrowing the right-sided neural foramen; disc bulge at the L5-S1 level impinging upon the thecal sac, and a rotator cuff tear at the posterior distal insertion the infraspinatus tendon, among other related aggravating conditions (NYSCEF Doc. No. 56, at par. 9). Dr. Parisien does not reference these particular injuries as alleged in the Bill of Particulars and merely states plaintiff complains of "neck, lower back and left shoulder pain" (NYSCEF Doc. No. 57, p. 1).

Upon proceeding with the examination, with the aid of a goniometer, Dr. Parisien concluded plaintiff's ranges of motion for his cervical spine were normal for flexion, extension rotation and lateral bending (*Id.*, p. 2) and that the lumbar spine "revealed normal lumbar lordosis with no evidence of spasm" and was also normal for flexion, extension and right and left lateral bending (*Id.*). As to plaintiff's left shoulder, Dr. Parisien concluded flexion, extension, abduction, internal and external rotation were normal, with no deltoid atrophy or "tenderness upon palpation of the acromioclavicular joints or over the greater tuberosity" (*Id.*, p. 3). After the examination, Dr. Parisian opined that all of plaintiff's alleged injuries were resolved, with no evidence of permanency or disability (*Id.*). Dr. Parisien, however, never referenced the particular C3-C4, L5-S1 and rotator cuff tear injuries claimed by plaintiff when stating his conclusions, nor does he opine whether the claimed injuries were caused by the subject accident.

Dr. Parisien also failed to address plaintiff's claim that he sustained a medically-determined injury or impairment of a non-permanent nature which prevented him from performing substantially all of the material acts which constituted his usual and customary daily activities for not less than 90 days during the 180 days immediately following the subject accident. Dr. Parisian did not relate any of his findings to this category of serious injury for the period immediately following the accident. Indeed, a question of fact is raised on this point when

plaintiff testified in his deposition that “for maybe two or three months all [he] did was go to the therapy and . . . went home.” (NYSCEF Doc. No. 59, p. 52, lns. 22-25; *see also* NYSCEF Doc. No. 12, at par. 13). Further, even though Dr. Parisien noted plaintiff was employed full time at the time of the accident and is currently working full time, he failed to note whether plaintiff missed any time from work as a result of the accident (*see* NYSCEF Doc. No. 12, at par. 27; *see also Rouach v Betts*, 71 AD3d 977, 977 [2d Dept 2007]; *Nenbhard v Delatorre*, 16 AD3d 390, 391 [2d Dept 2005]). Dr. Parisien’s failure to review plaintiff’s medical records renders his report insufficient to establish defendants’ *prime facie* case.

While a failure to review medical records, under certain conditions, may not necessarily negate the findings stated in an IME report (*see Hayes v Vasilios*, 96 AD3d 1010, 1011 [2d Dept 2012]), here Dr. Parisien specifically concedes that a post-IME review of plaintiff’s medical records (which was not done) could potentially alter the conclusions stated in the IME report. Without an initial or subsequent review of the medical records, Dr. Parisien had no objective reference for plaintiff’s alleged injuries.

Dr. Setton did not examine plaintiff and relied exclusively on his review of the MRI imaging. Upon such review, Dr. Setton concluded plaintiff’s alleged cervical and lumbar spine presented no evidence of acute fracture or malalignment, but only mild multilevel degenerative disc disease, with moderate foraminal stenosis

(NYSCEF Doc. No. 58, ps. 2, 4). As to plaintiff's left shoulder, Dr. Setton concluded that other than mild supraspinatus and infraspinatus tendinosis, no rotator cuff or labral tear was identified (*Id.*, p. 6). Like Dr. Parisian, Dr. Setton failed to establish that the limitations noted by plaintiff were not caused by the subject accident (*Ambroselli v Team Massapequa, Inc.*, 88 AD3d 927, 928 [2d Dept 2011]). The Court notes that any gap in plaintiff's treatment is explained by Dr. Rubino, who concluded plaintiff had reached "maximum medical improvement" and that plaintiff's insurance benefits had been terminated, and he could not afford to pay out-of-pocket for continued treatment (NYSCEF Doc. No. 87, at par. 25). Defendants' arguments to this effect are therefore without merit.

Based on the proof submitted, moving defendants have failed to make a *prima facie* showing that plaintiff does not qualify under the relevant serious injury threshold categories. Since the defendants failed to satisfy their *prima facie* burden, it is unnecessary to consider whether the papers submitted by plaintiff in opposition were sufficient to raise a triable issue of fact (*Winegard*, 64 NY2d at 853). In any event, where each party submits medical expert opinions as to the nature, extent and causation of plaintiff's alleged injuries that conflict with those of the other, credibility issues are raised that must be resolved by the fact finder (*Borodkin v Friedwald Center for Rehabilitation & Nursing, LLC*, 225 AD3d 657, 658 [2d Dept 2024]).

Conclusion

Accordingly, it is hereby

ORDERED, that defendants' motion (Seq. 03) for an order, pursuant to CPLR § 3212, granting summary judgment dismissing the complaint as against them, on the basis that plaintiff fails to meet the serious injury threshold under Insurance Law § 5102 [d], is denied in every respect.

This constitutes the decision and order of the Court.


For Clerks use only

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Motion Seq.#

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J.S.C.

**HON. WAVNY TOUSSAINT
J. S. C.**

**KINGS COUNTY CLERK
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